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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,222	01/04/2006	Oliver Wagner	0690-0126PUS1	1071
2292 7590 03/25/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER TUCKER, ZACHARY C				
ART UNIT		PAPER NUMBER		
1624				
NOTIFICATION DATE		DELIVERY MODE		
03/25/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/563,222

**Applicant(s)**

WAGNER ET AL

**Examiner**

Zachary C. Tucker

**Art Unit**

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date 4 Jan 06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### ***Lack of Unity of Invention***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1 (in part), 4 (not in part), 5-13 and 16 (all in part), drawn to compounds of formula I wherein  $X=N$  and  $Y=C-R^4$ , and a composition for controlling phytopathogenic fungi comprised thereof.

Group II, claims 1 (in part), 3 (not in part), 5-11, 13 and 16 (all in part), drawn to compounds of formula I wherein  $X=C-R^4$  and  $Y=N$ , and a composition for controlling phytopathogenic fungi comprised thereof.

Group III, claims 1 (in part), 2 (not in part), 5-9, 12, 13 and 16 (all in part), drawn to compounds of formula I wherein both  $X$  and  $Y=C-R^4$ , and a composition for controlling phytopathogenic fungi comprised thereof.

Group IV, claims 1, 5-9, 11, 13 and 16 (all in part), drawn to compounds of formula I wherein both  $X$  and  $Y=N$ , and a composition for controlling phytopathogenic fungi comprised thereof.

Group V, claims 14 and 15 (both in part), drawn to a "use" of formula I compounds, and a method for controlling phytopathogenic fungi comprising treating the fungi or the materials, plants, the soil or seed to be protected against fungal attack with an effective amount of a compound as set forth in Group I above.

Group VI, claims 14 and 15 (both in part), drawn to a "use" of formula I compounds, and a method for controlling phytopathogenic fungi comprising treating the fungi or the materials, plants, the soil or seed to be protected against fungal attack with an effective amount of a compound as set forth in Group II above.

Group VII, claims 14 and 15 (both in part), drawn to a "use" of formula I compounds, and a method for controlling phytopathogenic fungi comprising treating the fungi or the materials, plants, the soil or seed to be protected against fungal attack with an effective amount of a compound as set forth in Group III above.

Group VIII, claims 14 and 15 (both in part), drawn to a "use" of formula I compounds, and a method for controlling phytopathogenic fungi comprising treating the fungi or the materials, plants, the soil or seed to be protected against fungal attack with an effective amount of a compound as set forth in Group IV above.

Group IX, claim 17, drawn to a ketone compound of the formula IIID.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The compounds as set forth in Groups I-IV possess different, patentably distinct core heterocycles; the prior art applicable to one Group is not likely to be applicable to any of the other groups.

Thus, the "use" and method as set forth in Groups V-VIII similarly lack Unity of invention, under the PCT Rules.

The compound as set forth in Group IX is wholly unrelated to the structure of compounds as set forth in Groups I-IV and employed in the methods according to Groups V-VIII.

Furthermore, instant claim 1, from which all other compound claims depend recites a proviso excluding 2,4-dichloro-3-(*o*-methoxyphenyl)-1,8-naphthyridine, which is embraced by instant claim 1, *sans* the proviso. This compound is disclosed in Chen et al, *Journal of Heterocyclic Chemistry*, vol. 30(4), pages 909-912 (July 2003) (it is dubbed "3b" on page 909 of the article), which is cited in the Information Disclosure Statement filed 4 January 2006. So, instant claim 1 describes chemical compounds which are not novel over the prior art.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

### **Conclusion**

Any inquiry concerning this communication should be directed to Zachary Tucker whose telephone number is (571) 272-0677. The examiner can normally be reached Monday to Friday from 9:00am to 5:00pm. If Attempts to reach the examiner are unsuccessful, contact the examiner's supervisor, James O. Wilson, at (571) 272-0661.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

/Zachary C. Tucker/  
Primary Examiner  
Art Unit 1624

